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WE have received through the courtesy of Mr. Justice BRADLEY his able opinion in what is known as the Grant Parish case, in which he expounds the act of 1870, to enforce the right of citizens to vote. The question passed upon is of great importance to the people of the South. We shall either publish it or advert to it fully hereafter.

MURDER—CIRCUMSTANTIAL EVIDENCE—UDDERZOOK'S CASE—Some months ago (*ante*, p. 50), we published the main facts of this remarkable case. We now publish the opinion of the Supreme Court of Pennsylvania, affirming the judgment of the Oyer and Terminer of Chester county, and directing the sentence of death to be carried into execution. We could have wished to accompany the report with a full summary of the evidence, but it has not been practicable for us to do so. The chief point ruled will, however, be sufficiently understood without a statement of the facts in proof. It is, that a photograph likeness is admissible in evidence on the trial of an indictment for murder, for the purpose of identifying the person from whose features it is proved to have been taken, without further proof (as in case of paintings) of its being a correct likeness. The court, in the case of photographs, supply this necessary proof by taking judicial notice of the fact that photography is a means of producing correct likenesses. This conclusion accords with common knowledge and common sense; but a narrow and technical court could not have brought themselves up to it.

RETROACTIVE SCOPE OF LATE AMENDMENT TO THE BANKRUPT ACT—IMPORTANT DECISION.—The United States Circuit Judge for the Eighth Circuit on a petition for review brought under section 2 of the Bankrupt Act, in the cases of E. G. Obear and James S. Thomas, has recently made an important decision touching the scope and effect of the retrospective clauses of the recent amendment to the Bankrupt Act. The opinion will be given to our readers in full, but we mention at this time that the judge holds that while the amendatory act is retroactive in its operations, so as to bring within it all cases commenced since December 1, 1873, and in which, at the time of the taking effect of the amendment, June 22, 1874, the petitions for adjudication remained undetermined, yet it does not annul or disturb adjudications of bankruptcy actually made and in force at the time of the taking effect of the amendment. The case differed from that of Scammon (CENTRAL LAW JOURNAL, *ante*, p. 328), decided by Judge BLODGETT, as in this last case there had been no adjudication of bankruptcy when the amendatory act went into force.

Admissions to the Bar.

We ask attention to an exceedingly well written and sensible letter from a rising young lawyer of Alabama, which we print in another column. His suggestion of a lawyer's state convention to devise means of remedying the evils complained of, is an admirable one. This is substantially what has been accomplished in Iowa under the name of a State Bar Association. We quite agree with "JUVENIS" that "the young and active members of the bar must take the initiatory steps" in this movement. They are the real sufferers and are the ones most interested. The old members of the profession, whose fame is established, and who have at their backs an army of wealthy clients, are not directly affected by a general deterioration of the bar. But the young lawyer, however excellent his attainments and brilliant his prospects may be, must bear for a time the humiliation and shame of being classed by the public with the multitude of ignorant, incompetent and unworthy persons who are crowding into the ranks of the profession. Obviously the assistance of the older members of the bar should not be despised, but should be courted; but nothing should deter the young men from taking hold. They have more leisure, more energy, and a far greater interest at stake. Besides, the young men of to-day are the middle-aged men twenty years hence; and forty years hence, they are the veterans of the bar. The history of the Crown Law League is a striking example of the fact that there is nothing in the way of a needed and reasonable reform which a few determined and capable men combined together, cannot, by perseverance, accomplish. The motto of certain revolutionists may well be applied to every combination which is made to uproot old abuses:

"The patient dirt and powd r shock
Will blast an empire like a rock."

Power of State to Tax Land Grant of Union Pacific Railroad Company, and Burlington & Missouri River Railroad Company.

The Circuit Court of the United States for the District of Nebraska recently (July 6), made two important decisions in respect to the right and power of the state of Nebraska to tax the *lands* of the Union Pacific and Burlington companies. We have not space at present for the opinions in full, which were delivered by the circuit judge, but give a brief statement of the points decided. The case which involved the right of the state to tax the *lands* of the Union Pacific Railroad Company, was entitled the Union Pacific R. R. Co. v. McShane *et. al.* The court in this case ruled the following points:

1. Lands for which a *patent* has issued to the Union Pacific Railroad Company are taxable by the authorities of the state of Nebraska, notwithstanding the proviso in section 3, of the act of July 1, 1862 (12 Stats at Large, 489), which subjects lands not sold or disposed of by the company within three years from the completion of the road to settlement and pre-emption at $1.25 per acre. Case distinguished from The Railway Co. v. Prescott, 16 Wall. 603.

2. Said proviso construed and the respective rights of the company and persons proposing to settle and pre-empt the lands of the company stated.

3. A bill by the railroad company joining as defendants the various counties through which this railroad runs, is not multifarious where the question on which the case turns is common to all, and the counties are agencies of the state as that part of the taxes which they must pay into the state treasury.

4. Where in addition to the illegality of the tax the bill shows that if not enjoined a multiplicity of suits will arise, and a cloud be cast upon the owner's title, and that he has no adequate remedy at law, it presents a case of equity cognizance.

It will be remembered that the same court heretofore held that the road-bed and other property of the Union Pacific Railroad Company was taxable by the state, and that its judg-

ment was affirmed last winter by the United States Supreme Court. Union Pacific R. R. Co. v. Peniston, not yet reported. (See Central Law Journal, *ante*, p. 58.)

In the case of Horatio H. Hunnewell, suing for himself and others v. The Burlington and Missouri River R. R. Co. in Nebraska, the County of Cass and other Counties, the circuit court ruled the following propositions:

1. The land grant to the Burlington and Missouri River Railroad Company (act of July 2, 1864, sections 17, 20; 13 Stats. at Large, pp. 356, 364,) is not subject to the proviso in section 3 of the original act of July 1, 1862 (12 Stats. at Large, 489), giving to the public the right of settlement and pre-emption if the lands granted be not sold or disposed of within three years after the entire line of the road is completed.

2. Where the lands had been fully earned by the railroad company in 1871, and the cost of surveying paid as required by section 21 of said act of July 2, 1864, before the period for assessing lands for 1872 had passed, it was held that the lands were taxable, although the company did not pay the local land-officer's fees until a few days after the period for making the assessment for 1872 had expired.

The views of the court in respect to the right of the public to settle upon and pre-empt the lands of the Union Pacific Railroad Company are of great moment and will be adverted to separately.

Railway Tariff Regulation—The Potter Wisconsin Law.

The *constitution* of Wisconsin contains a provision that the charter of railroad corporations may be *altered* or *repealed* at any time by the legislature. The meaning and effect of this provision have recently been considered by the United States Circuit Court for the Western District of Wisconsin, at Madison (present Mr. Justice DAVIS, and Circuit Judge DRUMMOND), in a suit by the bondholders of the Chicago and Northwestern Railroad Company for an injunction to restrain the state attorney general and the railroad commissioners from enforcing the (Potter) law of last winter regulating railway tariffs. The injunction was denied, and in view of the broad reservation of power over corporations contained in the Wisconsin constitution, it seems to us that there can remain but little doubt as to the correctness of this conclusion. What the word *repeal* means is clear, and if the legislature may absolutely repeal charters, it would seem difficult to fix any practical limits to the *alterations* it may make in charters.

The result to which the court came was drawn up by Judge DRUMMOND and stated as follows:

1. **Jurisdiction of the Federal Court.**—On the assumption that the act of the 11th of March, 1874, relating to railroad, express, and telegraph companies in the state of Wisconsin, is invalid, we think the court has jurisdiction of the case. The bill as filed by the bondholders, citizens of Europe, and of other states, seeks to enforce equitable rights, and to prevent action by the railroad commissioners, which may result, as alleged, in serious injury to these rights. It was not necessary to wait until the commssioners had put the law in full operation, and its effects upon the railway companies had become complete, before the application against them was made to a court of equity, as a very important function of that court is to prevent threatened wrong to the rights of property.

2. **The Potter Law still in force Unrepealed.**—We are of opinion that the act of the 11th of March, mentioned above, was not repealed by the act of the 12th of March, 1874, the second section of which declared that all existing corporations within the state shall have and possess all the powers and privileges contained in their respective charters, and the act of the 12th of March, 1874, the ninth section of which imposes a penalty for exorbitant charges. There are apparent inconsistencies between the last two named acts and that of the 11th of March; but it becomes a question of intendment on the part of the legislature. On the same day a joint resolution was passed—March 12—directing the secretary of state not to publish the act of 11th March until the 28th of April. Acts of 1874, pp. 599, 693, 758, 773. In this state no general law is enforced till after publication. We think we may consider the joint resolution in order to determine whether the legislature intended that the two acts passed the same day should repeal the act of the 11th of March, and from that it is manifest that such was not the intention of the legislature.

3. **Constitutional Provision Construed and Applied.**—The charters of railroad corporations, under the constitution of Wisconsin, may be altered or repealed by the legislature at any time after their passage. In legal effect, therefore, there was incorporated in all the numerous grants under which the Northwestern Railway Company now claims its right of franchise and property in this state, the foregoing condition contained in the constitution. It became a part by operation of law, of every contract of mortgage made by the company or by of any its numerous predecessors, under which it claims. All share and bondholders took their stock or their securities subject to this paramount condition, and of what they in law had notice. If the corporation, by making a contract or a deed of trust on its property, could clothe its creditors with an absolute, unchangeable right, it would enable the corporation, by its own act, to abrogate one of the provisions of the fundamental law of the state.

4. **Same—Consolidation.**—This principle is not changed by any authority from the legislature of the state to a corporation to consolidate with a corporation of another state. The corporation of this state is still subject to the constitution of Wisconsin, and there is no power anywhere to remove it beyond that authority.

5. **Power of Legislature within State Limits.**—As to the rates for the transit of persons and property exclusively within the limits of this state, the legislature had the right to alter the terms of the charter of the Northwestern Railway Company, and the fact that such alteration might affect the value of its property or franchises, cannot touch the question of power in the legislature. The repeal of its franchises would have well-nigh destroyed the value of its tangible property; and while the latter, as such, could not be taken, still its essential value for use on the railroad would be gone.

6. **Grants by Congress do not Limit State Power.**—The fact that grants of land were made by congress to the state cannot change the rights of the corporators, or of the creditors. If the state has not perfected the trust, it must answer to the United States.

7. **As to State Power over Inter-state Commerce.**—The act of the 11th of March, 1874, while not interfering with rates of freight of property transported entirely through the state to or from other states, includes within its terms property and persons transported on railroads from other states into Wisconsin, or from Wisconsin into other states. This act either establishes or authorizes the commissioners to establish, fixed rates of freight and fare on such persons and property. The case of the state freight tax, reported in 15 Wallace, 232, decides that this last described traffic constitutes commerce between the several states, and that the regulation thereof belongs exclusively to congress. It becomes, therefore, a very grave question whether it is competent for a state arbitrarily to fix certain rates for transportation of persons and property of this inter-state commerce. As the right to lower rates implies also the right to raise them, there may be serious doubts whether this can be done. This point was not fully argued by counsel, and scarcely at all by the counsel of defendants; and, under the circumstances, we do not at present feel warranted, on this ground alone, to order the issue of an injunction. If desired by the plaintiffs it may be further considered at a future time, either on demurrer to the bil or in such other form as may fairly present the question to our consideration. The motion for an injunction is overruled.

Upon the conclusion of the reading of the above, Mr. Justice DAVIS remarked: "In view of the decision just rendered, we trust it will not be considered out of the line of our duty to make a suggestion concerning this litigation to the counsel for the defendants. It is manifest that the questions involved are grave ones, and that the court of last resort will ultimately have to pass on them. It is equally manifest that a speedy decision, in which all parties are vitally interested, cannot be obtained unless there is harmony of action on the part of both the complainants and defendants. In the meantime, and while this litigation is in progress, would it not be better for defendants, as far as lies in their power, to have the prosecutions for penalties suspended? These prosecutions are not required to settle rights. They are attended with great expense, and, if enforced while an effort is making in good faith to test the validity of this legislation, must cause

serious irritation, and cannot be, as it seems to us, productive of any good result."

One point having been left unsettled—that of the effect of the law in question on inter state commerce—Mr. Stoughton, for plaintiffs, expressed great anxiety for further argument and an early decision on that question, and considerable conversation followed between him, the court, and Attorney General Sloan.

Judge DAVIS thought the decisions and suggestions of the court would enable the parties to come to some arrangement which would render it practicable to get the matter before the supreme court at the October term, where a speedy hearing and determination might be had.

It was finally agreed that in case no such arrangement was made mutually satisfactory, the application for an injunction should be further argued on the question of the effect of the law on inter-state commerce, at Chicago, before the same judges, on Thursday or Friday of next week.

Are the Lands of the Union Pacific Railway Company Subject to Pre-emption by the Public?

This question, so important both to the public and to the company, was incidentally before the supreme court in what is known as the Prescott case (16 Wall. 603). It was recently before the United States Circuit Court for Kansas in a case in which the company sought to restrain the sale of its lands for taxes. For a synopsis of what the court decided see *ante*, p. 106

The question as to the right of pre-emptiom by the public arises upon section 3 of the charter of the company (12 Stats. at Large, 489). This section is the one which makes the grant of lands to the company within a specified distance of its line of road, and it concludes with this provision: "And all such lands so granted by this section, which shall not be sold or disposed of by the company within three years after the entire road shall be completed, shall be subject to settlement and pre-emption like other lands, at a price not exceeding $1.25 per acre, to be paid to the company."

Section 4 directs patents to issue for lands on each side of the road from time to time on the completion of sections of forty (afterwards reduced to twenty) consecutive miles, which patents it is enacted shall "convey the right and title to said lands to said company."

The road was completed may 10, 1869. In 1867 the company mortgaged its lands for about $10,000,000.

"Under this legislation, and upon this state of facts," says the circuit judge in delivering his opinion, "the ground taken by the company upon which it insists that the state of Nebraska has no right to tax any of its lands, whether patented or not patented, is, that by the provision in section three above mentioned, these lands are 'subject to settlement and pre-emption like other public lands, at a price not exceeding $1.25 per acre, to be paid to the company.' In support of this proposition the counsel for the company rely upon the case of The Kansas Pacific Railway Co. v. Prescott, 16 Wall. 603.

"I confess to some difficulty in distinguishing that case from the one now before the court, but upon the best consideration I have been able to give to the subject, I am of opinion that that case does not control this one, so far, at least, as regards the lands to which this company holds the patent of the United States.

"There are two elements in that case which, in material respects, distinguish it from the present one so far as the plaintiff company has received a patent for its lands: the first is that in that case the taxes were assessed before any patent had been issued; and the second is that they were assessed at a time when by reason of the non-payment of the costs of surveying, etc., required by section 21 of the act of 1864, the company was not entitled to a patent.

"If, in that case, the cost of surveying the land had been paid, and a patent for the land there in question had actually been issued before the taxes were assessed, it would seem that a different result would or might have been reached.

"It is not my purpose to discuss at length the respective rights of the general government and of the railroad company in the lands after the lapse of three years from the completion of the road, nor whether a mortgage of the lands is such a 'disposition' of them as would defeat the right of settlement or pre-emption. The proofs show that the company has dealt with these lands, and is now dealing with them, as if they were, in all respects their absolute property. They are advertising and selling them at their own prices and upon their own terms, and they do not recognize the right of the public to settle upon and pre-empt them, and to buy them at $1.25 per acre. On the other hand, neither congress nor the interior department has taken any steps to subject these lands to settlement and pre-emption, and the public are denied the right to the benefit of the privilege or reservation in their favor.

"I am inclined to think the true meaning and effect of the provision in question to be this: While the road is being constructed, and for a period of three years after the completion of the entire line, the company may sell or dispose of the lands at their own price, and they are subject during this period to no right of settlement or pre-emption; after the three years have elapsed, the company may still sell or dispose of their lands in good faith, but as to any lands not thus sold or disposed of, there is a right on the part of the public to settle upon and pre-empt them in the same manner as if they were part of the public domain—the price not exceeding $1.25 per acre, being payable to the company instead of the government.

"This view harmonizes and gives effect to all the different provisions of the act. The right of the company to the lands granted is a substantial one. The title passes to the company. Patents are required to be issued to the company conveying the 'right and title to the lands.' During the three years the right of the company to sell at its own price is clear, and has not been denied. After the three years the title does not change. The company still owns the lands, but 'subject' to the right of any person possessing the qualifications of a pre-emptor to settle upon them and obtain them as a pre-emptor may obtain other public lands. But this right does not prevent the company from selling lands in good faith to persons who may not wish to pre-empt or occupy them. The rights intended to be given to the public are secured, and the evils apprehended from the company having a monopoly of such a vast amount of lands, are avoided by this construction—which recognizes the right of the actual settler to pre-empt

the lands, and thus destroy the monopoly, and also the right of the company, actually and in good faith, to sell any tract not at the time pre-empted, and which, if sold, likewise destroys to that extent the monopoly, since a sale of lands is usually the first step towards their settlement and cultivation.

"If this be a correct view of section 3 of the act of 1862, it results that the lands of the company, so far as they are patented, are subject to taxation by the authority of the state, and this privilege reserved in favor of the actual settler, and of which he may never wish to avail himself, which is contingent in its nature and subject to be defeated by a sale of the lands by the company, is not inconsistent with and will not defeat the rightful authority of the state to tax the lands.

"As to lands which have been patented to the company, I am of opinion that it is the the substantial owner, and that equity should not relieve it from taxation in respect thereto, because it may be compelled to sell particular tracts here and there to actual settlers at a dollar and quarter an acre."

Contracts in Restraint of Trade.

THE OREGON STEAM NAVIGATION COMPANY v. HENRY WINSOR, *et al.*

Supreme Court of the United States, No. 222, October Term, 1873.

1. **Contract in Restraint of Trade.**—Whether a contract is in restraint of trade is void as being against public policy can not, in this country, be tested by the fact that it restrains the exercise of a particular trade within the limits of a particular state. Such a contract may be valid, although it restrains the exercise of a particular trade in another state.

2. ——. **Divisible.**—A contract in restraint of trade may be divisible; so that a part will be held valid as being beneficial to the obligee, and not injurious to the public, and a remaining part void as against public policy.

3. ——. **Case in Judgment.**—In 1864, the California Steam Navigation Company, which was engaged in navigating the waters of California, sold to the Oregon Steam Navigation Company, which was engaged in navigating Columbia river and its tributaries, in Oregon and Washington, one of its steamers, the vendees stipulating that they would not employ the said steamer on the waters of California for ten years, after the first day of May, 1864. Three years later, the vendees sold the said steamer to third persons, who were engaged in navigating the waters of Puget Sound in Washington Territory, and the latter vendees stipulated, that they would neither employ the said steamer on the Columbia river or its tributaries, nor on the waters of California, for the period of ten years thereafter. Upon these facts it is *held*:

(1) That the first contract between the California and the Oregon company is presumed to have had a good consideration in the price paid for the steamer by the latter company, and was not such a contract in restraint of trade, as is void as being against public policy.

(2) That the second contract is divisible: (*a*) That part of it by which the last vendees agreed not to employ the steamer on the Columbia river or is tributaries, was not, for the reasons applicable to the first contract, void as against public policy. (*b*) That part of it which restrained the last vendees from employing the said steamer on the waters of the California was likewise valid, so far as it was necessary to enable the Oregon company to keep its covenant with the California company—that is to say, it was valid for the space of ten years, from the first day of May, 1864, but as to the last three years covered by it, it was not beneficial to the last vendee, and was void as against public policy.

In error to the Supreme Court of the Territory of Washington.

Mr. Justice BRADLEY delivered the opinion of the Court.

This action was brought in a district court of Washington Territory to recover $75,000 as stipulated damages for the breach of a certain agreement between the parties. The complaint was demurred to, and the demurrer was sustained, and the action dismissed. The plaintiff brought a writ of error to the supreme court of the territory, which affirmed the judgment. This is a writ of error to the judgment of the supreme court, and brings up for consideration simply the sufficiency of the complaint.

The principal facts set out in the complaint are the following: It states that in 1864, the California Steam Navigation Company being engaged in steam and other transportation on the several routes of travel on the rivers, bays, and waters of the state of California, sold to the plaintiff, being a company engaged in the like business on the Columbia river, and its branches, in Oregon and Washington, the steamer "New World," for $75,000, subject to a stipulation, amongst other things, that the plaintiff should not run or employ, or suffer to be run or employed, the said steamer upon any of the routes of travel, rivers, bays, or waters of the state of California for the period of ten years from the 1st day of May, 1864; that on the 18th day of February, 1867, the plaintiff sold the same steamer to certain of the defendants for the sum of $75,000, subject to a stipulation and covenant that the said steamer should not be run or employed upon any of the routes of travel, or the rivers, bays, or waters of the state of California, or the Columbia river and its tributaries, for the period of ten years from the 1st day of May, 1867; and that for a breach of said covenant the defendants, to-wit, the vendees of the vessel as principals, and the other defendants as sureties, should pay $75,000 as actual liquidated damages. The complaint further averred, that at the time of the second sale of the steamer, and up to the commencement of the suit, the California Steam Navigation Company were engaged with numerous steam and other vessels in navigating the waters of the State of California; and that the Oregon company, the plaintiffs, were likewise engaged in the navigation of the Columbia river and its branches; and that at the time of said sale to the defendants, the latter were engaged in navigating the waters of Puget Sound, and were in no wise engaged in the navigation of the waters of Oregon or California, or of any of the waters described in the stipulation. The breach complained of is, that the steamer has been engaged from the 1st of November, 1868, to the commencement of the suit, in the transportation of passengers and freight from the city of San Francisco to Vallejo, in the state of California, being a route of travel on the waters of the state of California embraced in the stipulation and convenant.

The case turns mainly upon the question, whether the covenant entered into by the defendants, whereby they agreed "not to run or employ, or suffer to be run or employed, the said steamboat 'New World' upon any of the routes of travel, or the rivers, bays, or waters of the state of California, or the Columbia river and its tributaries, for the period of ten years from the 1st day of May, 1867," etc., is valid. The objection urged against it is, that it is a contract in restraint of trade, and as such, contrary to public policy.

It is a well settled rule of law that an agreement in general restraint of trade is illegal and void; but an agreement which operates merely in partial restraint of trade is good, provided it be not unreasonable, and there be a consideration to support it. Chitty on Contracts, 576, 8th Am. Ed. In order that it may not be unreasonable, the restraint imposed must not be larger than is required for the necessary protection of the party with whom the contract is made. Ib. TINDAL, C. J., in Horner v. Graves, 7 Bing. 743. A contract even on good consideration, not to use a trade anywhere in England, is held void in that country, as being too general a restraint of trade; but a contract not to use a trade at a particular place, if it be founded on a good consideration, and be made for a proper and useful purpose, is valid 2 Wms. Saund. 156, note 1. Of course, a contract not to exercise a trade generally would be obnoxious to the rule, and would be void.

The application of the rule is more difficult than a clear understanding of it. In this country especially, where state lines interpose such a slight barrier to social and business intercourse, it is often difficult to decide whether a contract not to exercise a trade in a particular state is, or is not, within the rule. It has generally been held to be so, on the ground that it would compel a man thus bound to transfer his residence and allegiance to another state in order to persue his avocation. Taylor v. Blanchard, 13 Allen. 375; Dunlop v. Gregory, 6 Selden, 241.

But this mode of applying the rule must be received with some caution. This country is substantially one country, especially in all matters of trade and business; and it is manifest that cases

may arise in which it would involve too narrow a view of the subject to condemn as invalid a contract not to carry on a particular business within a particular state. Suppose the case of two persons associated in business as partners, and engaged in a manufacture by which they supply the country with a certain article, but the process of manufacture is a secret; and they agree to seperate, and one of the terms of the separation is, that one of the parties shall not sell the manufactured article in Massachusetts, where the other resides and carries on business; and that the latter shall not sell the article in New York, where his associate is to reside and carry on business Can there be any doubt that such an agreement would be valid and binding? Cases must be judged according to their circumstances, and can only be rightly judged when the reason and grounds of the rule are carefully considered.

There are two principal grounds on which the dictrine is founded, that a contract in restraint of trade is void as against public policy. One is, the injury to the public by being deprived of the restricted party's industry; the other is, the injury to the party himself by being precluded from pursuing his occupation and thus being prevented from supporting himself and his family. It is evident that both these evils occur when the contract is general, not to persue one's trade at all, or not to persue it in the entire realm or country. The country suffers the loss in both cases; and the party is deprived of his occupation, or is obliged to expatriate himself in order to follow it. A contract that is open to such grave objection is clearly against public policy. But if neither of these evils ensue, and if the contract is founded on a valid consideration and a reasonable ground of benefit to the other party, it is free from objection, and may be enforced.

In accordance with these principles it is well settled that a stipulation by a vendee of any trade, business or establishment, that the vendor shall not exercise the same trade or business, or erect a similar establishment within a reasonable distance, so as not to interfere with the value of the trade, business, or thing purchased, is reasonable and valid. In like manner a stipulation by the vendor of an article to be used in a business or trade in which he i himself engaged, that it shall not be used within a reasonable region or distance, so as not to interfere with his said business or trade, is also valid and binding. The point of difficulty in these cases is to determine what is a reasonable distance within which the prohibitory stipulation may lawfully have effect. And it is obvious, at first glance, that this must depend upon the circumstances of the particular case; although, from the uncertain character of the subject, much latitude must be allowed to the judgment and discretion of the parties. It is clear that a stipulation that another shall not persue his trade or employment at such a distance from the business of the person to be protected, as that it could not possibly affect or injure him, would be unreasonable and absurd. On the other hand, a stipulation is unobjectionable and binding which imposes the restraint only to such an extent of territory as may be necessary for the protection of the party making the stipulation, provided it does not violate the two indispensable conditions, that the other party be not prevented from pursuing his calling, and that the country be not deprived of the benefit of his exertions.

To apply these principles to the case before us: The California Steam Navigation Company, being engaged in the business of transportation on the rivers, bays, and waters of California, was willing to sell one of their steamers to the Oregon Steam Navigation Company, which was engaged in a similar business on the Columbia river and its tributaries, provided the latter company would agree that the steamer should not be used in the California waters for the period of ten years from the 1st day of May, 1864. This stipulation was necessary to protect the former company from interference with its own business. It had no tendency to destroy the usefulness of the steamer, and did not deprive the country of any industrial agency. The transaction merely transferred the steamer from the employment of one company to that of another situated and doing business in another state. It involves no transfer of residence or allegiance on the part of the vendee in order to persue its employment, nor any cessation or diminution of its business whatever. The presumption is that the arrangement was mutually beneficial to both companies, and that it promoted the general interests of commerce on the Pacific coast. Again, the Oregon company were afterwards willing to dispose of the same steamer to the defendants, who were engaged in the like business of transportation in the waters of Puget Sound, Washington territory, provided that the latter would agree that the steamer should not be run or employed upon any of the routes of travel or rivers, bays, or waters of California, or the Columbia river and its tributaries for the period of ten years from the 1st day of May, 1867. This stipulation excluded the steamer from the territory covered by the former stipulation exacted by the California company, and also from the territory occupied by the Oregon company itself. The latter portion of the stipulation stands on the same ground and reason as did the first stipulation between the California and Oregon companies. The former portion was necessary in order that the Oregon company might faithfully keep its covenant with the California company. It is true that the stipulation in question covers a period of time which extends three years beyond the period for which the Oregon company is bound to the California company. The latter would expire on the first of May, 1874, and the stipulation in question extends to the first day of May, 1877. This extra period of three years in reference to the waters of California is not necessary to the protection of the Oregon company. That company is under no obligation with regard to those three years. But the suit is brought and the breach is alleged for a portion of time during which the Oregon company is bound to protect the California company from the interference of said steamer. And the question arises whether the contract is so divisible in relation to the California portion that it can stand for the seven years for which the Oregon company is bound, though it be void as to the remaining three years. We think it is so divisible. It is laid down by Chitty as the result of the cases, and his authorities support the statement, "that agreements in restraint of trade, whether under seal or not, are divisible; and, accordingly, it has been held that when such an agreement contains a stipulation which is capable of being constructed divisibly, and one part thereof is void as being in restraint of trade, whilst the other is not; the court will give effect to the latter, and will not hold the agreement to be void altogether." The cases cited in support of this proposition are Chesman & ux. v. Nainby, 2 Strange, 739; Wood v. Benson, 2 Cr. & J. 94; Mallan v. May, 11 Mees & Welsb. 652; Price v. Green, 16 Mees. & W. 346; Nichols v. Stretton, 10 Q. B. 346 In Price v. Green the contract was not to exercise the trade of a perfumer in London, or within six hundred miles thereof; and it was held divisable and good for London only. This case was carried through all the courts. In Nichols v. Stretton the stipulation was that an attorney's apprentice, who was to serve five years, should not, after his term expired, be concerned as an attorney for any persons who had, previous to the expiration of said apprenticeship, been a client of the attorney with whom the contract was made, or who should at any time thereafter become his client. It was strenuously and fully argued that whilst the contract might have been good as to past clients it was certainly not good as to future ones, and being an entire contract, the whole was bad. But the court followed the previous decision of the Exchequer Chamber in Price v. Green, held the contract divisible, and sustained the action. We see no reason why this principle should not be followed in the present case. The line of division between the period which is properly covered by the restriction and that which is not so, is clearly defined and easily drawn. It is subject to no confusion or uncertainty, and the court can have no difficulty in applying it.

Regarding this objection, therefore, as removed, the covenant made by the defendants seems to stand on the same ground as that made by the plaintiffs with the California company. The same observations may be made with reference to it. The public was not injured by being deprived of any of the business enterprise of the country. The vendees did not incapacitate themselves from carrying on business just as they had previously done, and in the same locality. Their business was rather facilitated by the arrangement. Finally, the stipulation, it will be presumed, was founded on a valuable consideration in its influence upon the price paid for the steamer; its object and purpose was simply to protect the vendors, and if we except the three years before considered in its relation to California, its restraining effect extended no farther than was necessary for their protection.

We are unable, therefore, to see anything in the contract, so far as it is now in question, which militates against public policy.

There are no other points adverted to which demand the serious consideration of the court.

The judgment must be reversed, and the case remanded to be proceeded in according to law.

Dissenting, Justices CLIFFORD, SWAYNE and DAVIS.

REVERSED AND REMANDED.

Murder — Circumstantial Evidence — Photograph Likenesses, Etc.

WILLIAM E. UDDERZOOK v. THE COMMONWEALTH.

Supreme Court of Pennsylvania, in Banco, Philadelphia, July 2, 1874.

Present: Hon. DANIEL AGNEW, Chief Justice,
Hon. GEORGE SHARSWOOD, "HENRY W. WILLIAMS, "——— ——— MERCUR, } Associate Justices.

[1. **Murder—Circumstantial Evidence.**—A conviction of murder in the first degree, upon circumstantial evidence as to the identity of the deceased, and the defendant's connection with the crime, affirmed on an examination of the evidence.

2. ———. **Evidence--Photographs.**—A photograph taken from life, and proved to resemble the person photographed, fills the same measure of evidence as a portrait painted from life by an artist. It is admissible, subject to disproof or doubt, and its effect is to be determined by the jury.

3. ———. ———. ———. **Judicial Notice.**—The court will take judicial cognizance of the fact that photographs are a proper means of producing correct likenesses. It follows that photographs are admissible in evidence for purposes of identification, although proof of their correctness has not been made by experts.

4. ———. ———. **Habits of Intoxication.**—Evidence of habits of intoxication is competent upon a question of identity.

5. ———. **Practice--Papers Introduced in Evidence may be Taken to Jury Room.**--Where, on a trial for murder, the jury have retired, and returned for additional instructions, it is not error to permit them to take with them to the jury room papers which have been introduced in evidence and commented upon on the trial.]

Opinion of the court by AGNEW, Ch. J.

This is indeed a strange case, a combination by two to cheat insurance companies, and a murder of one by the other to reap the fruit of the fraud. Winfield Scott Goss, an inhabitant of Baltimore, had insured his life to the amount of $25,000. He was last seen at his shop on the York road a short distance from Baltimore, on the evening of the 2d of February, 1872, in company with William E. Udderzook, his brother-in-law, the prisoner, and a young man living near. They left him to go to the house of the young man's father.

In a short time the shop was discovered to be on fire. After it had burned down a body was drawn out of the fire, supposed to be that of Goss. Claims were made upon the insurance companies, the prisoner being active in prosecuting them. On the 30th of June, 1873, the prisoner and a stranger, a man identified as Alexander C. Wilson, appeared at Jennersville, in Chester county, this state, and remained over night and the next day. In the evening, July 1, the prisoner and this stranger left Jennersville together in a buggy. Next day, on being met and asked what had become of his companion, the prisoner said he had left him at Parkersburg. On the 11th of July, the body of a man, identified on the trial as W. S. Goss, or A. C. Wilson, was found in Bear's woods, about ten miles from Jennersville; the head and trunk buried in a shallow hole in one place and the arms and legs in another. The stranger who was with the prisoner at Jennersville, identified as A. C. Wilson, was traced from place to place, living in retirement, from June 22, 1872, up to within a day or two of the time when he appeared with the prisoner at Jennersville. During this interval the prisoner and Wilson were seen together several times under circumstances indicating great intimacy and privacy. Wilson has not been seen or heard of since the evening of July 1, 1873, when he left Jennersville in company with the prisoner. The great question in the case was, the identity of A. C. Wilson as W. S. Goss. This was established by a variety of circumstances, and many witnesses, leaving no doubt that Goss and Wilson were the same person, and that the body found in Bear's woods was that of Goss.

All the bills of exceptions, except one, relate to this question of identity, the most material being those relating to the use of a photograph of Goss. This photograph, taken in Baltimore or. the same plate with a gentleman named Langley, was clearly proved by him, and also by the artist who took it. Many objections were made to the use of this photograph, the chief being to the admission of it to identify Wilson as Goss; the prisoner's counsel regarding this use of it as certainly incompetent. That a portrait or a miniature painted from life and proved to resemble the person, may be used to identify him cannot be doubted, though, like all other evidences of identity, it is open to disproof or doubt, and must be determined by the jury. There seems to be no reason why a photograph, proved to be taken from life and to resemble the person photographed, should not fill the same measure of evidence. It is true the photographs we see are not the original likenesses, their lines are not traced by the hand of the artist, nor can the artist be called to testify that he faithfully limned the portrait. They are but paper copies taken from the original plate, called the negative, made sensitive by chemicals, and printed by the sun-light through the camera. It is the result of art, guided by certain principles of science.

In the case before us such a photograph of the man Goss was presented to a witness who had never seen him, so far as he knew, but had seen a man known to him as Wilson. The purpose was to show that Goss and Wilson were one and the same person. It is evident that the competency of the evidence in such a case depends on the reliability of the photograph as a work of art, and this, in the case before us in which no proof was made by experts of this reliability, must depend upon the judicial cognizance we may take of photographs as an established means of producing a correct likeness. The Daguerrean process was first given to the world in 1839. It was soon followed by photography, of which we have had nearly a generation's experience. It has become a customary and a common mode of taking and preserving views as well as the likenesses of persons, and has obtained universal assent to the correctness of its delineations. We know that its principles are derived from science; that the images on the plate, made by the rays of light through the camera, are dependent on the same general laws which produce the images of outward forms upon the retina through the lenses of the eye. The process has become one in general use, so common that we cannot refuse to take judicial cognizance of it as a proper means of producing correct likenesses.

But happily the proof of identity in this case is not dependant on the photograph alone. Letters from Wilson identified as the handwriting of Goss; a peculiar ring, belonging to Goss, worn upon the finger of Wilson; the recognition by Wilson of A. C. Goss as his brother: packages addressed to A. C. Goss and envelopes bearing the marks of the firm with which W. S. Goss had been employed coming and going to and from Baltimore, and

many other circumstances following up the man Wilson, leave no doubt of his identity as Goss, independently of the photograph.

The objection to the proof of Goss' habits of intoxication is equally untenable. True the habit is common to many, and alone would have little weight. But habits are a means of identification, though with strength in proportion to their peculiarity. The weight of the habit was a matter for the jury.

It is unnecessary to follow the bills of exception in detail. They all relate to facts and circumstances bearing on the question of identity. If the bills of exception are many, they only denote that the circumstances were numerous, and in this multiplication consists the strength of the proof.

They are many links in a chain so long it encircles the prisoner in a double fold. The question put to G. P. Moore, A. H. Barintz, and A. R. Carter, were unobjectionable. Whether they really could not identify the dark and swollen face of the corpse it was not for the court to decide; its weight belonged to the jury.

There was no error in permitting the jury, after their return into the court for further instructions, to take out with them, at their own request, the letters, check, due-bill, and application for insurance papers which had been proved, read in evidence and commented on in the trial. The appearance, contents, and hand-writing of these documents were no doubt important, and to be inspected by the jury, who would not be expected to carry all these features in their minds. It is customary in murder cases to permit the jury to take out for their examination the clothing worn by the deceased, exhibiting its condition, the rents made in it, the instrument of death, and all things proved and given in evidence bearing on the commission of the offence.

We discern no error in this record, and therefore affirm the sentence and judgment of the court below, and order this record to be remitted for execution.

JUDGMENT AFFIRMED.

Correspondence — An American Lawyer in London — The New Judicature Act

LONDON, May, 1874.

EDITORS CENTRAL LAW JOURNAL:—The new judicature act, as you are aware, comes into operation here on the second of November next. Before I came here, or had examined the act, I heard it spoken of in Boston as a revolutionary measure—a very dangerous experiment. The chances are, I think, that they who thus spoke had never read the act at all. The The act consolidates the courts of Chancery, Queen's Bench, Common Pleas, Exchequer, High Court of Admiralty, and the Courts of Probate and of Bankruptcy into one Supreme Court, but with two divisions, a High Court and a Court of Appeal. Nominally it sweeps away all the first above named courts, but, in truth nothing but the name is swept away. The old judges all remain, with some new powers. Apparently appeales to the privy council are abolished, and yet hardly that, because the privy councillors are still to be employed under the new organization. No judge of the new court can, at the same time, be a member of the House of Commons; but this operates no change, since, I believe, that not one of the judges of the courts abolished is a member of the House of Commons. They are all or nearly all in the House of Lords; and there they may remain and be the judges of the new court as they now are of the old ones. The High Court is broken into five divisions, and these divisions correspond, very nearly at least, to the five or six courts abolished. The same judges are to be the judges still, not relieved from their old duties, and with few new ones imposed. Appeal to the House of Lords is abolished; but I believe on all questions of law, certainly in, and since, the trial of Mr. Hastings, the lords have taken the advice of the judges, and in most cases decided in conformity to such advice.

The division of the legal year into terms is abolished. Choses in action are made assignable. It is said the distinction between equity and law is abolished; but this is not so. Equitable jurisdiction is conferred upon the courts sitting in the trial of common-law cases; and where there is conflict between the rules of equity and the rules of the common law, the equity rule obtains. The rule in the Admiralty Court as to collisions, when both are at fault, is to be the admiralty, and not the common-law rule, wherever there is a variance. The judges have power to sit and act at any time, and at any place, for the transaction of business. It is in the discretion of the court to appoint referees in certain cases to try matters of fact. No judge of the Court of Appeal is to sit on the hearing of an appeal from any judgment or order made by himself, or any divisional court, of which he was a member. All writs at common law, bills, or informations in chancery, causes in admiralty, or citations in the Court of Probate, are to be instituted in the High Court by a proceeding called an action. The facts of the case are to be briefly stated, and the nature of the relief asked stated. To such action there is to be an answer. Exceptions and writs of error are abolished. Causes are to be re-heard on motion. There has not been, so far as I can learn, for years any demand for ampler, but only for speedier justice. It is said this act is a lawyer's measure; and I believe it. But I believe the interest of lawyers is identical with the public interest. Except only in very extraordinary cases, no lawyer can ever get rich in the conduct of a case which is very long delayed. It is as much for his interest as for the interest of his client that a case should be disposed of within some reasonable time. This measure was reported upon by commissioners some years since. The bill was introduced by Lord Selborne, the chancellor, who, however, was largely indebted to the chief justice of the Queen's Bench for some of the best provisions. The bill was recodified by lawyers, and supported, as it passed, by them; and but for their co-operation and support it could not have been passed. It ought to be understood, if it is not, that the 3,000 attorneys, and 3,900 barristers in London, all of whom are made simply solicitors by this act, are, nevertheless, a power in London—in Parliament and out of it; nor can it be denied, they are a power productive of great good. He who says or supposes they worked only to their own interest and comfort in supporting this measure, knows neither these lawyers nor understands the case. I am sure London and the British Empire owe their greatness in very great part to their lawyers.

PELHAM.

Admissions to the Bar.

SELMA, ALA., July 6th, 1874.

EDITORS CENTRAL LAW JOURNAL:—I am a constant reader of your live, interesting, and useful journal. I admire its high tone, and the alacrity with which its editors condemn that which is pernicious. Your approbation of that which tends to establish a higher standard of legal ethics, and to promote the interests of our profession, deserves more than our thanks—you ought to have the earnest co-operation of the lawyers of the land. Permit me to express my thanks for your article in number 27, entitled "Admissions to the Bar."

I was not aware, before I read it, that this subject was receiving, in so many states from and so many journals, the serious consideration which it deserves. The carelessness with which candidates are admitted even in the supreme court of our state (Alabama), has already worked serious mischief, and can but be regretted by those of the profession who have a proper regard for its welfare. It is true that the ignorant, unskilled and immoral attorney soon loses whatever business he may at first receive, but he has time and opportunities to bring disgrace upon the profession.

We have a rule of our supreme court, not only permitting persons to practice, having a license from the highest court of the state whence they come, but also admitting any one who "has a diploma from any respectable (?) law school," etc. Some of these diplomaed gentlemen are too ignorant to draft an ordinary power of attorney, deed of conveyance, or a plea of *non assumpsit*. Do not understand me as decrying a proper course of training in a law school; my regret is that my struggle in life begun too early to enable me to receive the benefits of a thorough education. If, however, with my experience, I had the choice of a course of study at a law school, or a clerk's place in an office where there was a good library and plenty of work, I should choose the latter.

The legal profession of our state are greatly to blame for admitting to the bar persons who have neither a common school education, a knowledge of the law, nor "a good moral character." The fault is not in our laws—they are probably stringent enough. Candidates are required to be examined by a committee on *seven* different branches of the law. So indifferent are the committees to these requirements, however, that a casual *private* examination of five or ten minutes suffices to get the requisite certificate. Several years ago an applicant for law license in one of *our cities* in this state was unable to answer the question "what is a bill of exchange?"

Yet this man was admitted to practice in "the several courts of this state."

The only remedy I can see for the existing evil is a *lawyers' state convention*. In such a convention this and many kindred irregularities and hindrances might be brought to the attention of the bar, and such steps taken as would redound to its honor. Such a convention was recently advocated by one of our leading daily journals at the suggestion of a prominent member of The Bar Association of Dallas County. I regret to say that there was no general response to this call. We hope, however, that the subject will be again agitated, and that it will eventually lead to such a convention from which great good may result. The medical profession of this and many other states have for years enjoyed the advantages of their state conventions. Are there not many good reasons why our lawyers should have a state convention? Let us then have it, and let the lawyers and judges by their action, so far as in their power lies, take steps to prevent improper "admissions to the bar." If such a convention is ever held, the young and active members of the bar must take the *initiatory* steps—the older ones have, we fear, neither the time nor inclination to engage in the work necessary to bring about its proper organization. We hope to have the benefit of their wisdom in its deliberations. JUVENIS.

[Communicated.]

Section 14 of the Bankrupt Law as Amended.

Some doubts having been created by contradictory constructions placed upon the 14th section of the bankrupt law, Congress passed the amendment, which was approved March 3d, 1873. The constitutionality of that amendment has been questioned, and it becomes an interesting subject of investigation to the profession and to the public.

What was the true meaning of that part of section 14, as passed and approved March 2d, 1867, adopting the exemptions of the several states, in each state respectively? It seems to have been considered that the words "at the time of the commencement of the proceedings in bankruptcy," etc., in the sentence, qualified the expression "as is exempted," and also qualified the words "by the laws of the state;" and, therefore, it was supposed by some that the amount exempted by the laws of a state at the *time* bankruptcy proceedings begin should be exempted to the bankrupt; while others thought the original act exempted all the state exemptions of 1864. By the former it is held that the intention of congress was to confine and limit the operation of the law to such property as legal process from the state courts could have subjected at the time proceedings in bankruptcy were begun by or against the individual. See Bump on Bankruptcy, p. 129, citing *In re* Askerr, 3 B. R. 142. But referring to the punctuation of that part of the 14th section, we find that the words "at the time of the commencement of the proceedings in bankruptcy" are disconnected by a comma from that part of the sentence wherein is used the words "*as is* exempted from levy and sale," and grammatically they only qualify the words "has his domicil." If congress had intended that the words "at the time of commencement of proceedings," should be a clause qualifying either of the expressions "as is exempted from levy and sale," or "by the laws of the state," then it should have been punctuated with a comma after the word "state," and after the word "domicil" another comma, so as to read "by the laws of the state, in which the bankrupt has his domicil, at the time of commencement of proceedings," etc. It is evident that the use of the present tense in the expression "*as is exempted*," etc., refers to the time of the approval of the original act, March 2d, 1867. A little further reflection will tend to satisfy any one of the correctness of this view.

That congress had a constitutional right to prescribe a reasonable exemption of property for each bankrupt, we have never seen questioned. And that, too, without reference to the inhibition of section 10 of article 1 of the federal constitution against impairing the obligation of contracts; for it is aimed only at state legislation. But congress could delegate none of its constitutional power over this subject to a state legislature. If congress could refer to a state legislature the power to amend or change one of the sections of the bankrupt law, so it could almost any other. If, therefore, it is held and construed that the exemptions to a bankrupt in any state should vary or be changed by any and every expression of the law-making power of the state, regulating and changing its exemption laws, even while congress is not in session, and without any amendment passed by congress, is not that virtually referring to the states the power to fix the amount of exemptions the bankrupt shall retain? We think congress could not do this. No principle of law is better settled than this: When a legislative act is susceptible of two constructions, one of which is constitutional and the other not, then the former must be held to be the one intended by the legislature. And hence we say that it was not the intention of congress to fix so variable and varying a standard of exemptions for bankrupts. Another reason for our conclusion is that in the next preceding sentence of section 14, Congress, in adopting the exemptions by the laws of the United States, uses this language: "And such other property *as now is, or hereafter shall be*, exempted," etc.

Did congress, by thus adopting the exemptions of the several states, destroy the uniformity of the law? That the original act was not wanting in uniformity for this reason, seems to be conceded, and it was so decided in the case of *In re* Beckerford, 4 B. R. 59. In that case Judge KREKEL and Judge MILLER, in the Circuit Court for the Eastern District of Missouri, so decided. *Ex parte* Appold, 16 Am. L. R. p. 624. The amendatory act, approved 3d of March, 1873, has recently passed under the criticism of Chief Justice WAITE, sitting at Richmond. And it is reported that he declared it unconstitutional because not uniform. If its lack of uniformity is to be attributed to the fact that under its operation different amounts are exempted in the different states, then the same objection would apply with equal force to the corresponding part of the original act adopting the various state exemptions. Hence, if the original act did not lack uniformity, neither does this amendment of it. That uniformity in the original act was not destroyed by the fact that it adopted the various state exemptions, we think the cases of *In re* Beckerford, 4 B. R. 59, and *Ex parte* Appold, 16 Am. L. Register, 624, heretofore referred to, sufficiently show. SUBSCRIBER.

Revision of the Statute Law and Codification of the Common Law.

The revision and codification of our law are scarcely less important to the profession and the public than the Judicature Act. It is fitting that these great changes should be as nearly contemporaneous as possible. We apprehend that in 1876 every lawyer of eminence or in practice will have in his study a complete edition of the statutes at large, consisting of about twenty-volumes in all; a code of the common law, consisting of about five volumes; a code of equity, consisting of about three volumes; and a book of practice. These twenty-eight or thirty volumes will, in all probability, supersede the three or four thousand volumes of statutes, books of reports in law and equity, text-books on practice and miscellaneous subjects, which now encumber the shelves of many a law library. The lord chancellor has just passed the bill through its second stage, which contains the revision of the statute law down to 1837. In 1868 a commission was appointed to revise and publish an edition of the statutes down to that year. Of this revised edition five volumes have already been published, and are in the hands of the profession, and contain all the statutes passed down to the year 1824, and which are still in force. These five volumes have superseded forty-three volumes of the octavo, or twenty-six and a half volumes of the quarto edition of the Statutes at Large. Along with them a chronological table and complete index of the statute law down to the year 1872 has been published. The bill proposed by the lord chancellor sanctions a sixth volume, which will contain the acts which were passed between 1824 and 1837, and which are still in force. It is calculated that the revised edition of the statutes, passed between 1837 and 1868, will occupy something like nine or ten volumes more. During this session the lord chancellor does not intend to touch the question of codification of the common law and we highly approve of his abstention. The Judicature Act will blend the systems of common law and equity to such an extent as materially to affect the rules laid down by the judges during the period when the two branches were distinct. Many of these rules would never have been propounded but for the existence of the two separate systems in this country. As an example we need only refer to Lord Hardwicke's observations in Wortley v. Birkhead, 2 Ves. 571. When speaking of the equitable doctrine of tacking mortgages, he says: "It could not have happened in any other country but this, because the jurisdiction of law and equity is administered here in different courts, and creates different kinds of rights in estates, and, therefore, as courts of equity break in upon the common law where necessity and conscience require it, still they allow a superior force and strength to a legal title to estates." If the lord chancellor should proceed with the codification of the common law during the next session, as he proposes, we will then have the

three new systems simultaneously established, which will alter the entire administration of the law in all its branches—expediting, simplifying, and contracting its rules, enactments, and procedure, and effecting a revolution which will be unprecedented in its nature and extent.—*Irish Law Times.*

Notes and Queries.

KIRKSVILLE, MO., July 3, 1874.

EDITORS CENTRAL LAW JOURNAL:—A. has a judgment against B. B. has a homestead, which is occupied by him as such at the rendition of the judgment. Shortly afterwards he leases his homestead out for two years and goes to another state, but with the intention of returning at the end of the two years and again occupying his homestead as such. Is it liable to sale under execution while thus leased out. ADAIR.

ANSWER.—There have been within the last ten years numerous decisions in the Western and Southern states upon what constitutes an abandonment of a homestead. If the *animus revertendi*—the intention of returning—can be proved as our correspondent states it, we think it probable that the homestead right was not abandoned. See Mills v. Van Boskirk, 32 Tex. 360; Cross v. Evarts, 28 Tex. 523; Shepherd v. Cassiday, 20 Tex. 29; Gouhenant v. Cockrell, 20 Tex. 96—cases which embody the rule that the abandonment of a homestead can only be established "by the most clear, conclusive and undeniable evidence." In Shepherd v. Cassiday, *supra*, Chief Justice HEMPHILL, a very able judge, whose mind had been enlarged by the study of the maxims of the civil law, and whose learning adorns and elevates the jurisprudence of Texas, declared that "the homestead is not to be regarded as a species of prison bounds which the owner cannot pass over without pains and penalties. His necessities or circumstances may frequently require him to leave his homestead for a greater or less period of time. He may leave on visits of business or pleasure; for the education of his children; or to acquire in some more favorable location means to improve his homestead; or for the subsistence of his family; or he may intend to abandon provided he can sell. But let him leave for what purpose he may, or be his intentions what they may, provided they are not those of total relinquishment or abandonment, his right to the exemption cannot be regarded as forfeited." "It must be undeniably clear," said the same learned judge in Gouhenant v. Cockrell, *supra*, "and beyond almost the shadow, at least all reasonable ground of dispute, that there has been a total abandonment with an intention not to return and claim the exemption."

It has, however, been decided in Illinois that, while in case of the death of a husband, or of both parents, and the children are of tender years possession by a tenant may protect the property from sale on execution (Brinkerhoff v. Everett, 38 Ill. 263), yet, *when the husband is living*, the family must reside on the homestead. Cabeen v. Mulligan, 37 Ill. 230; Tittman v. Moore, 43 Ill. 169. And see Walters v. People, 21 Ill. 178; Kitchell v. Burgwin, 21 Ill. 40.

The question could be pursued at great length through a list of varying decisions, but we have not space to devote to it. The question will be found in some states settled by the terms of the statute, as in Michigan, where actual occupancy is required in order to preserve the right. That the question of intent to abandon is one of fact for a jury, see Gibson v. Robbins, 10 Watts, 156; Goodman v. Losey, 3 Watts & Serg. 526.

CARTHAGE, MO., July 3, 1874.

EDITORS CENTRAL LAW JOURNAL:—Suppose A. sues B., C. and D. jointly. B. files an application for a change of venue in his own behalf, which application is sustained. C and D file no such application, and are anxious to have the case tried in the court where the suit is brought. How will the court proceed in the case, in this state? Please answer through the LAW JOURNAL and oblige a CARTHAGE SUBSCRIBER.

ANSWER.—The only possible doubt in the matter is raised by the use of the words "any party" in the Missouri statute, 2 Wagn. Stat. p. 1356, § 3. But notwithstanding this, it is manifest that *one* defendant will not be permitted to drag after him his *two* co-defendants to another county, if they object to it, and if their rights would be prejudiced by the change. They are "parties" as well as he, and clearly have as strong a right to stay as he has to go; and if the case is one which does not admit of a severance, the rights of the one must yield to those of the two, rather than permit the rights of two to be subordinated to those of one. Under the facts stated, we should suppose, then, that it would clearly be the duty of the judge to refuse to take jurisdiction, and to send the case back to the court from whence it came. That this is the correct view, we think is inferable from the following cases: Sailly v. Hutton, 6 Wend. 508; Legg v. Dorsheim, 19 Wend. 700; Welling v. Sweet, 1 How. Pr. 156; Simmons v. McDougal, 2 How. Pr. 77. See also Mairs v. Remsen, 3 Code R. 138; Job v. Butterfield, 1 Eng. Law & Eq. 417.

SPRINGFIELD, MO., June 22, 1874.

EDITORS CENTRAL LAW JOURNAL:—If you have space in your valued paper I would like to ask a few questions. A. sues B., an absentee, by attachment, and gets a special judgment. A. is absent, himself, and his attorney neglects to follow up with execution. So it stands for *four* years, when A. at last looks the matter up. He finds that after the attachment, during trial, and before judgment, the seven years' presumption as to B.'s life expired, and that no attorney or administrator was appointed to represent B. As the original demand is barred by limitation, what shall he do?

Is the judgment good, void, or voidable? Supposing it good, how can it, a special judgment, be revived? STUDENT.

ANSWER.—Our answers to questions of this character must be understood as conjectures merely. We think the judgment is valid. The law raises presumptions to supply the absence of proof, and out of convenience and necessity. Unless we are greatly mistaken, presumptions of law, such as the presumption of death after seven years' absence, will not be raised to unsettle rights which have been acquired, or to overturn the solemn judgment of a court of record, regular on its face. In such a case the presumption of death would be met and overturned by the stronger presumption which courts always indulge in favor of the regularity of judicial proceedings. After final judgment has been rendered and time has elapsed, rather than presume that the defendant was dead when judgment was rendered, simply on the supposition that he had been absent seven years, a court would presume that the court rendering the judgment had evidence before it that he was alive. Assuming the judgment to be good, we suppose it may be revived by *scire facias* and publication, if the defendant is still a non-resident, but this may be a matter of more doubt.

Book Notices.

THE FORUM, a Quarterly Law Review, April, 1874. Baltimore. Edited by Atkinson Schaumburg, Esq.

The Bench and Bar Review of Baltimore, conforming to a suggestion made by us at the time, has changed its name to "The Forum," and the second number is before us. It is embellished with a portrait of the venerable Reverdy Johnson, and contains a brief sketch of his life. The contents of the number are as follows:

Article I. Amendments to the Federal Constitution.—The constitutional convention, its history, powers, and modes of proceeding. By Hon. John Alexander Jameson, Chicago. II. War Claims and Claims of Aliens. By Hon. Wm. Lawrence, Ohio. III. The Forum and its Chances.—The public and private life of Lord Chancellor Eldon, with selections from his correspondence. By Horace Twiss, Esq., one of her majesty's counsel. IV. The Civil Law—Its Origin, Growth and Mutations.—1st. Sources of the Roman Civil Law, by William Grapel; 2d. Compendium of Civil Law, by Ferdinand Mackeldey. By Prof. George Fred. Holmes, University of Virginia. V. Parol Evidence in Explanation of Contracts, from Albany Law Journal. VI. Valid Voluntary Settlement of a Chose in Action. VII. Reverdy Johnson. VIII. Tappan v. Merchants' National Bank of Chicago. IX. Decisions in United States, for February, March and April, 1874. X. Abstract of the English Reports, for February and March, 1874. XI. Red Tape. XII. Book Notices.—1. The Spirit of Laws; 2. The Doctor and Student; 3. A Manuel of Medical Jurisprudence; 4. Civil Liberty and Self-Government; 5. An Exposition of the Constitution of the United States; 6. Trodden Down, and Other Novels; 7 and 8. Our Exchanges. XIII. The Green Bag.

LAW OF THE DOMESTIC RELATIONS. By JAMES SCHOULER, author of the Law of Personal Property. Second edition. Boston: Little, Brown & Co. 1874.

This is an excellent treatise and deserves the favor it has met, having reached a second edition in about four years after the appearance of the first. The classification of subjects embraced in the general title of Do-

mestic Relations, as treated by the author, is the same substantially as that of Kent and Reeve. Accordingly, five leading topics are considered: *First*, Husband and Wife; *Second*, Parent and Child; *Third*, Guardian and Ward; *Fourth*, Infancy: *Fifth*, Master and Servant.

Although the author has precedent for including in the scope of his work the relation of Master and Servant, yet it is our opinion that logically and properly it does not belong there, at least in modern times. The brief discussion given to this topic shows that the author, in reality, regarded it a foreign graft. The domestic relations sprung from the marriage relation or *status*, and philosophically Mr. Bingham was right in dividing, in his treatise, the subject into Infancy and Coverture.

Confessedly the most important topic is that of Husband and Wife, and accordingly the author has purposely devoted quite one-half of his work to marriage, and the effects of coverture on the powers and rights of the wife as respects herself, her husband and third persons, and growing out of this the right of the wife in equity, to separate estate, and the nature and effect of marriage settlements, both ante-nuptial and post-nuptial, and the general doctrine of separation and divorce.

We cannot in the limits of an ordinary notice follow the author into the detail of his treatment of the various topics embraced in his volume. It is written in a clear and succinct style, and the effect of the English and American adjudications is satisfactorily presented. A careful examination of the book justifies us in saying that it deserves a very high rank among recent text-books in the law, and we confidently recommend it as being, in our judgment, for an American lawyer, the best treatise on the subject now before the public.

The book is intended to exhibit the marriage *status* and its effects as viewed in England and in the states of this country, and is strictly a *legal* treatise on the Domestic Relations.

The mode of treatment is well indicated by the author, who, in concluding his introductory chapter, reminds the reader "that the office of the text-writer is to inform rather than invent; to be accurate rather than original; to chronicle the decisions of others not his own desires; to illumine paths already trodden; to criticise if need be, yet always fairly and in furtherence of the ends of justice; to analyze, classify, and arrange; from a mass of discordant material to extract all that is useful, separating the good from the bad, rejecting whatever is obsolete, searching at all times for guiding principles; and, in fine, to emblazon that long list of judicial precedents, through which our Anglo-Saxon freedom 'broadens slowly down.'"

It is quite obvious, we think, that the author entertains indulgent, if not favorable, views of the common-law doctrines concerning the effect of the marriage relation upon the wife. His treatment of these doctrines is conservative, and, as his book is intended for practicing lawyers rather than legislators, he keeps, it may be said wisely, close in sight of the coast of judicial precedents. We need not deny that in the state of society in which the common law originated, its rules in respect to the disabilities of the wife, and the property rights of the husband, *may* have then been wise, but they have, at all events, long since ceased to be so. It is our judgment that, as respects *property*, whenever or however acquired, there should be absolute equality between husband and wife. His property before marriage, should remain his, and the wife's should remain her's, and in each case be beyond the control of the other. On the death of either, their rights in respect of dower, or the equivalent substitute, should be the same. If there are no children, she should have one-half of all property of which the husband died seized, and if children, say one-third in fee. The husband to have the same rights in respect of all property of the wife. The separate property of each to be in no event liable for the separate debts of the other, but liable for family expenses.

It is our judgment, also, that most of the *common law disabilities* of coverture are absurd in themselves and pernicious in their operation. As to all domestic or family matters the legal relation between husband and wife should be that of absolute equality. The husband, simply as husband, should have no more right to the control of the children than the wife. But as respects the relations of the family to the outside world, a few prerogatives or superior rights must, ordinarily, be conceded to the husband. He, in general, represents the family in its legal relations to the world. On him devolves, usually, the duty of making provision for their support. In case of a conflict of views as to domicile, and in general as to matters connected with the husband's business, his will should be the law, and should prevail over the wife's. The marriage relation can, in our judgment, be more safely rested upon the basis of intelligent, equal companionship, than upon the dependent and unequal condition of the wife which the common law imposed as the result of marriage. We have perhaps already said enough on this subject. We close by adding that, although many of the modern "married women's acts" are crude, and, in some instances, unjust to the husband and to creditors, yet the necessity for them has long been seriously felt, and they mark a steady progress in the right direction. The pioneers in this line of advance in the common law countries were the equity judges of England—SOMERS, COWPER, HARDWICKE, and their successors, who, without legislative aid, constructed a system of rules which shielded the wife from the many oppressive consequences of the common law doctrines, and who in this instance anticipated the more tardy legislative relief.

We should have been glad to have seen from so competent a person as the author, more original discussions and practical suggestions; for the law of husband and wife is in a transition period—but others will prefer the work as it is, and it is, indeed, one in which much can be found to praise and little to criticise.

DIGEST OF THE DECISIONS OF THE SUPREME COURT OF IOWA, from the organization of the court in 1839 to 35th Iowa, 1873. By THOMAS F. WITHROW, late reporter of said court and editor of American Corporation Cases, and EDWARD H. STILES, present reporter of the court. Vol. 1. Chicago: E. B. Myers. 1874.

The first volume of this long-expected work lies upon our table, and if we are indebted to the delay for its excellent qualities, the profession will overlook the disappointment which its non-appearance at an earlier day has from time to time occasioned. By reason of its comprehensive plan, and extending to date, and giving the text of statutes whenever they have been deemed essential to understand the statement of the decisions, the present work will supersede in practice the digest of Dillon, which comes down only to 1860 (7th Iowa), and Hammond, which comes down to 1866, and Lacy, a supplement which ended with 27th Iowa. The decisions between 27th and 35th Iowa have not before been digested. Lord Macaulay, speaking of Fox and Mackintosh's fitness for the work of writing their histories, says: "They had one eminent qualification for writing history—they had spoken history, acted history, lived history." The same may be said of the authors of the present Digest. Mr. Withrow was reporter to the court from 9th to 21st Iowa, inclusive, and Mr. Stiles has been the reporter from that time to the present, and we but record the verdict of all who are familiar with the Iowa Reports when we say that, perhaps, no state in the Union has had reporters in any respect more capable than these gentlemen. We do not hesitate to pronounce the present to be, in our judgment, a model digest. Whoever thinks it an easy work to prepare a good digest of judicial decisions is greatly mistaken; and the author of such a work as this, while certain not to receive full credit for the talent, skill and industry required, and to fall short of the deserved pecuniary reward, ought to receive the grateful thanks of the profession whose labors are thus made lighter and easier. When we receive the 2d volume, which will soon appear, we design to notice the work more at length. Whoever is gratified in seeing a handsome, and even elegant, law-book, will not fail to thank the enterprising publisher for the style in which he has produced this work. It is a real pleasure to look upon it.

MEMOIRS OF WESTMINSTER HALL. With an Historical Introduction by EDWARD FOSS, F. R. S., author of The Lives of the Judges of England. New York: James Cockcroft & Co. 1874.

This enterprising firm is reproducing in an elegant style some of the best *quasi* legal works which have appeared in Great Britain. The "Adventures of an Attorney in Search of Practice," by Samuel Warren, is followed by the "Memoirs of Westminster Hall," in two volumes. This work gives the history of this famous structure from the date of its erection in the reign of William II to the present time—a period of nearly 800 years, and presents the reader with a plan of the Hall and the Judicial Courts, and with illustrations of its interior and exterior appearance. It also contains plates showing the appearance of the lord chief justice and the lord chancellor in their robes of office, and portraits of Lord Brougham, Lord Thurlow, Lord Eldon, Lord Erskine, Lord Denman, and the famous Littleton. The rest of the work consists in a collection of historical sketches of the famous judges in law and chancery who have had seats in Westminster Hall, and incidents and anecdotes concerning them.

It is very interesting reading, *not unprofitable withal*, and, judging from our experience, we venture to say that whoever takes it up will not leave it until he finishes it.

Summary of Our Exchanges.

The American Law Times and Reports for July contains, besides the usual excellent digest of cases from the law journals, the amendatory bankrupt law, with an index. This was also published by us in our issue of July 2. It also contains, Dingee v. Becker, a case decided in the District Court of the city of Philadelphia, by PLAYER, J., holding that the proof of a debt in a bankrupt court does not extinguish it, and discussing the rights of a creditor who has thus proved his debt, in respect of his prior remedies, and also the right of a party who has not been before the bankrupt court, to sue the bankrupt in a state court. It also publishes the important case of Underwood v. McVeigh, to appear in 24 Grattan, which relates to the question of fraud in judicial sales. This was a painful case, in which a defendant, whose property had been libelled under the confiscation act of congress, and who had appeared by an attorney, was refused a hearing on the ground that he was "within the Confederate lines and a rebel," and his property was thereupon condemned and sold, and bought *by the wife of the district judge*, the latter not being ashamed in his judicial capacity to confirm the sale and direct the divestiture and investiture of title. A more questionable proceeeing does not occur in our judicial annals, and the only obligation to silence on the part of the public now is, that the grave has lately closed over the earthly remains of the judge who was guilty of it. We shall notice this case more at length hereafter. The Law Times also reports Heaton v. Fryberger (published in the Western Jurist for May), which relates to the effect of mistakes in the deed of a married woman; also Rees v. Watertown (municipal bonds) published in this journal for April 2. It also publishes a charge to the jury by District Judge LONGYEAR, in the United States Circuit Court for the Eastern District of Michigan, upon the construction of the words, "die by his own hand" in a policy of life insurance, and which also discusses the presumptions as to death and sanity of the deceased, and the degree of derangement necessary to avoid a policy of life insurance containing a provision that the insurer shall not be liable in case of suicide. It also publishes the opinion of the Supreme Court of the United States in *ex parte* Robinson (power to disbar attorney for contempt) published in the CENTRAL LAW JOURNAL for June 4.

The Western Jurist for July contains the tenth installment of an article on tax titles in Iowa. We hope these papers will be collected in a book when they are completed, as they will be of much use to those investigating such titles in other states. It also prints an elegant and readable address of Hon. John W. Campbell to the graduating class of the Albany law school, which has previously appeared in the Albany Law Journal. Also the opinion of Mr. Justice NOTT, in the case of Mrs. Lockwood in the Court of Claims, with a note from this journal; also two decisions of the Supreme Court of Iowa, which we shall notice in our Notes of Cases, next week. But the feature of the Jurist which renders it most valuable to the practitioner, and indispensible to him if he lives in Iowa, is its very full digest of the current decisions of the Supreme Court of that state; being, in the present number, forty pages in length. We shall take the liberty of selecting from these for our Notes of Cases.

The Chicago Legal News for July 4, publishes Kerr v. Smith, Superior Court of the United States, on bankruptcy, articles of separation, subsequent reconciliation, and effect of voluntary conveyance by husband to wife. Also Harris v. Hatfield, Supreme Court of Illinois, action for damages resulting from defendant's owning and having in his possession within the state of Illinois, certain Texas or Cherokee cattle, in violation of the act of April 16, 1869. Also Chicago, Rock Island & Pacific R. R. Co. v. Town of Lake, asserting the power of a town corporation to open a street through a block of land purchased and owned by a railroad company, and used for railroad purposes. Also Lull v. Chicago, same court, holding and applying the familiar doctrine that, in the ascertainment of boundaries, fixed monuments will prevail over a printed or written plat. Also Van Namee v. Bradley, same court, a case of replevin by a wife, of property which had been siezed by a sheriff, where one of the defences was that the property belonged to the husband. Also *re* Scammon, published in our issue of July 2. This case was furnished to the News by Mr. Bissell, the official reporter of the court, and is much fuller than that as given by us. The Legal News also publishes an opinion of the Supreme Court of Illinois in Lewis v. D'Arcy, on the right of a mortgagee of (personal) property to take possession when levied on by a sheriff under an execution against the mortgager.

The American Law Record for July prints an exceedingly interesting article on "Trial by Jury, and the Public Prosecutor System in Germany," by Edward Zimmerman, LL. D., solicitor and foreign jurisconsult, from which it appears that trial by jury exists in Germany only in name, and that the jury is systematically and legally packed, and its powers so essentially curtailed that it is the mere agent and tool of despotic government. Those who talk about abolishing the jury in this country would do well to read it. As illustrating the fact that, in Germany as elsewhere, the jury is a recognized agent of liberty against despotism, we find that the German people are strongly in favor of the trial by jury, while the government is equally opposed to it. The Law Record also publishes the important case of The Newport and Cincinnati Bridge Company v. The United States, heard in the United States Circuit Court for the Southern District of Ohio, before Mr, Justice SWAYNE, involving questions as to the rights of this company, which had commenced the erection of a bridge over the Ohio river upon specifications approved by congress, and which had partly completed the bridge when congress prohibited its completion except upon a different plan. The case goes to the Supreme Court of the United States. The Law Record also prints the New Jersey Pavement Case, as published in this journal with a note (*ante*, p. 252). Also, Lasly v. Phipps, Supreme Court of Mississippi, published in the American Law Register for April, and noticed in this journal for May 21 (*ante*, p. 249), the question discussed being the effect of retroactive homestead laws upon the obligation of contracts. Also the excellent observations of Dr. Hammond, of Iowa, on "Legal Education and the Present State of the Literature of the Law," published in this journal for June 11 (*ante*, p. 292). Also an opinion of the Court of Appeals of Virginia, in Ould & Carrington v. City of Richmond, holding that a municipal corporation may constitutionally tax lawyers as such. We shall publish or notice this case hereafter. The contrary has been decided by the Circuit Court of St. Louis County, Missouri and by the Supreme Court of Tennessee. The Record also publishes notes of a number of interesting cases from the Supreme Court of Ohio, and Court of Appeals of Kentucky.

So far as our other exchanges, received this week, contain matters of interest, they will be noticed next week.

Legal News and Notes.

A bill to abolish imprisonment for debt in England has been defeated by a vote of 215 to 72.

—THE president has appointed General Fagin, of confederate fame, and lately commander-in-chief of the Brooks forces, United States marshal for Arkansas.

—THE appointment of judge for the western district of Arkansas, in place of Judge STORY, resigned, will not be made till next winter. In the meantime Judge CALDWELL will, under the law, hold court in that district.

—G. VAN HOOREBEKE, Esq., who recently brought to a successful termination, in the Supreme Court of Illinois, the great constitutional case known as the "Grab law case" (published in our issue of July 2), has settled in Denver, Colorado.

—MISS LAVINIA GOODELL, of Janesville, Wisconsin, has been admitted to the bar. The Chicago Legal News vouches for her as "a young lady of good education, fine appearance, modest bearing," and has no doubt that she will succeed well at the bar and receive, as she deserves, the good will and respect of her brethren in the profession.

—JUDGE T. J. MACKEY, of South Carolina, has returned to his home from a visit to Washington, where he had a conversation with the president. He says General Grant asked him sharply, "Why don't you convict Moses?" and when he replied that he could not get him into court, the president denounced the assumption that a president or a governor is above the law as monstrous.

—A CANADA barrister has placarded public places in a historic city of the Dominion with notices that he gives special attention to marine protests. Our excellent contemporary, the Canada Law Journal, questions whether he has thereby developed a purity of taste in matters professional at all worthy of imitation. This is not quite so bad as the St. Louis shyster who advertises anonymously "divorces obtained without exposure, and money advanced on lawsuits."

—OUR excellent contemporaries, the Albany Law Journal and the Canada Law Journal, are engaged in a discussion about the treatment of Dr. Kenealy, the solution of which seems to hinge on the question whether it is proper to spell judicial with a capital J, according to the latter, or whether it is proper to spell "her majesty, the queen," with small letters, according to the democratic ideas of the former. We suggest that they call in a printer's devil and let him settle it.

—THE Khedive of Egypt has, by treaty which has received the sanction of this government, agreed to establish a supreme court, which, as we understand it, shall have jurisdiction of all private controversies and criminal accusations affecting the subjects of the Christian powers assenting to the arrangement. This abolishes in the Khedive's dominions, the jurisdiction of our consuls, who have hitherto exercised jurisdiction over criminal accusations against our own citizens in that country. The court is to be composed in part of subjects of the

Khedive (or of the Sultan, whichever is sovereign) and in part of foreign representatives, of which England, France, and the United States are entitled to nominate one each. The president has nominated as the American member of the court, the Hon. Victor Barringer of North Carolina.

—A. H. GIDDINGS, of Newaygo, Mich., for many years a circuit judge in that state, attempted to commit suicide in Chicago, on Wednesday, by jumping into the river off Clark street bridge. Instead of falling into the water, as was evidently his intention, he fell upon the dock below, broke his right leg and seriously injured his head. He was removed to the county hospital, where he now lies in a precarious situation. Judge GIDDINGS was a man of fine natural powers, good education, and an able lawyer, but, unfortunately, for several years he has indulged to such an extent in the use of intoxicating drinks as to be almost entirely unfitted for any kind of business. There is no doubt but at the time of this attempt on his life he was insane.—*Chicago Legal News.*

—WE learn from the Canada Law Journal that the number of capital convictions in the Dominion of Canada since July 1 1867 were 69, of which 42 were for murder, 20 for rape, 4 for piracy, 1 for wounding with intent to murder, 1 for stabbing with intent to murder, and 1 for levying war against the Queen. Of these, in 40 cases the sentences were commuted to different terms of imprisonment. One was pardoned. In the remaining 28 cases the sentences were carried into effect. We are struck by the unusual number of convictions for rape; and considering that this crime remains *capital* in the Dominion, as at common law, it is hard to account for it. We may indulge in the supposition that not even the sub Arctic climate of the Saint Lawrence has sufficed to modify the ardent habits of the French, "that dissipated nation," as a great English poet, referring to this subject, expressively pronounced them.

—NOTWITHSTANDING our judges, both state and federal, are miserably paid, yet it may be said to their great credit, and the great credit of the bar, that the occasions have been rare where judges have incurred even the suspicion of being corrupted with money. To say that they are not often governed by preconceived bias; by the pride of individual opinion; and even at times by political prejudices, would be to say that they are more than human. But it may be said to the high honor of the bench, and of the bar which surrounds the bench and fortifies and upholds its honor and integrity, that there are few, if any, instances in our history, where judges have been convicted of receiving a direct pecuniary bribe, intended to influence their official conduct. So universal is the faith of the people in the integrity of the judiciary that we believe the occasions are extremely rare where attempts have been made through the influence of money, to tamper with the integrity of a judge. A ludicrous instance, however, of an attempt to bribe the Chief Justice of the Supreme Court of Wisconsin, has just been made public. On Wednesday morning, July 9, at the opening of the Supreme Court, Chief Justice RYAN said he had received with his mail a letter enclosing $100, which he read as follows:

"RICHFIELD, June 30, 1874.

"E. G. RYAN:

"*Dear Sir*:—Please du for me what you can. If I will win the case I give you a hundred dollars more. "LUDWIG HENRY ZAUN

"Richfield, Washington county, Wisconsin.

"I vot for Mr. Taylor."

The Chief Justice said he had no means of judging whether the letter was really written and signed by the party whose name appeared on it; but, on consultation with his associates, he felt it to be his duty to make the matter public, that it might be investigated. He had, therefore, requested the presence of the attorney general, and his assistant being present, he referred the letter and its contents to him for such action as should seem best. He remarked, with much feeling, that he did not know what he had ever done to subject himself to such a gross insult, and expressed his certain conviction that the attorneys for the applicant had nothing to do with the matter. Zaun is a defendant in a suit pending in that court for the possession of some land.

Notes of Cases.

Power of Towns to incur debts to defend their existence.—The Supreme Court of Massachusetts in the case of Cooledge v. Brookline, has just decided that a town in that state has no *corporate duty* to defend its *boundaries or existence* as a town before the legislature, and therefore no right to incur a debt therefor, or to tax the inhabitants to pay a debt thus incurred. The court in a valuable opinion by ENDICOTT, J. cites the following authorities: People v. Morris, 13 Wend. 325; State Bank v. Knoop, 16 How. 369, 380; Riddle v. Props. Locks and Canals, 7 Mass. 187; Warren v. Charlestown, 2 Gray, 104; Eastman v. Meredith, 35 N. H. 284; Dillion on Mun. Corp. sec. 23 and following sections; Att'y Gen. v. Norwich, 2 Myl. & Cr. 425; and it refers to the case of the Queen v. Sheffield, 6 Q. B. 652, in which it was held that the expense incurred for the benefit of the inhabitants by the mayor and aldermen of Sheffield in offering in Parliament a bill introduced in relation to a supply of water to the town cannot possibly be an expense necessarily incurred in carrying the act (6 Wm. 4 ch. 76) into execution. No duty in that respect being imposed by the act, no power to use borough fund followed.

Partition Fences.—In Bobb v. Brachman, 24 Ohio State, 3, Supreme Court of Ohio, December Term, 1873, the following points are ruled:

1. In an action brought under the act of May 3, 1859, (S. & C. 81, 648) to recover one-half the value of a partition fence, the appraisal of the township trusteees duly made, in pursuance of the provisions of the act, is, unless impeached for mistake or fraud, conclusive with respect to value, and of the fact that the fence, in character and quality, meets the requirements of the statute; but such appraisal is not evidence of any other fact.

2. The plaintiff in such action is not precluded from recovering by the fact that the fence is a better or more expensive one than would have satisfied the requirements of the statute.

3. Nor does the fact that the fence does not conform to the boundary line between the lands of the respective parties necessarily constitute a defence to such action It is sufficient upon this point if it was constructed and maintained as and for such line fence, and was recognized and acquiesced in as such by the defendant.

Devise—Election.—In Huston v. Cone, 24 Ohio State, 11, Supreme Court of Ohio, December Term, 1863, it is held:

1. Where a will assumes to give to one of its beneficiaries property of another person for whom provision is likewise made in the will, the latter cannot take the provision made for him in the will, and also hold the property, but must elect which he will take.

2. In order to put the party to such election, it must plainly appear that it was not the intention of the testator to give him the provision made in the will in addition to the property, except where the property in question is the widow's right of dower, as to which the rule has been reversed by statutory provision.

3. A court of equity has jurisdiction to compel the party to make such election, or to abide by an election already made.

4. Such election, in order to make it binding upon the party, must be made understandingly, that is, with a knowledge of the facts, and of the party's rights under the will.

———. **Money Borrowed by Husband from Wife.**—In the same case the following point is also ruled:

Money borrowed by the husband from the wife, and secured to her by the note of the husband, given to her at the time of receiving the money, will, after her death, and as between the husband and her estate, be regarded as an equitable claim against the husband; and, therefore, a provision in her will releasing such claim, is a provision beneficial to the husband.

Restitution of Money Collected on a Judgment which is afterwards Reversed.—Where property is sold under execution and the proceeds paid over to the execution plaintiff and the judgment in pursuance of which the execution was issued is afterwards reversed, the plaintiff may (in New York) demand restitution of the money, although an agent may have stipulated otherwise, if such stipulation amounts to an agreement, transferring the principal's property to the agent. Holloway v. Stevens, New York Supreme Court, General Term; 5 Daily Register, 147.

Release of Sureties on Tax Collector's Bond.—In Johnson v. Hacker, Law Department of Nashville Com. Reporter, June 22, the Supreme Court of Tennessee (NICHOLSON, Ch. J., delivering the opinion) rule that the giving of time to a tax collector by an act of the legislature to collect and account for his liabilities as such tax collector, operates as a release of the securities on his bond. The learned judge quotes in support of this rule from United States v. Simpson, 2 Penn. 437, and says: "The exact question involved in this case was determined in two cases in Illinois—one of Davis v. The People, 1 Gilman 409, the other The People v. McHatton, 2 Gilman, 638. In both it was held that the giving of time to a tax collector by an act of the legislature, was a release of their sureties. We concur in the correctness of these decisions, and hold that in the present case the demurrer was properly overruled." [NOTE.—We learn from a subsequent number of the same journal that a rehearing has been granted in this case. EDS.]

Agent of Common Carrier—When Risk Commences.—In Watson v. The Memphis & Charleston Railroad Company, reported in the Law Department of the Nashvill Com. Reporter, the Supreme Court of Tennessee (MCFARLAND, J. delivering the opinion), ruled:

1. A depot agent in charge of the business of receiving and forwarding freight, in the absence of special instruction, made known to the public would have the power to bind the company to receive and forward freight, and such contract may be made before the goods are actually tendered and delivered.

2. The risks of the common carrier, commences on the delivery and acceptance of the goods.